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## CITATIONS

Miscellaneous:

# In the Supreme Court of the United States

OCTOBER TERM, 1953

No. 431

BRUCE G. BARBER, DISTRICT DIRECTOR, IMMIGRATION AND NATURALIZATION SERVICE, SAN FRANCISCO, CALIFORNIA, PETITIONER

*v.*

PEDRO GONZALES

*ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT*

## BRIEF FOR THE PETITIONER

### OPINIONS BELOW

The majority and dissenting opinions below (R. 25–35) are reported at 207 F. 2d 398.

### JURISDICTION

The judgment of the Court of Appeals was entered on September 15, 1953 (R. 36). The petition for a writ of certiorari was filed on October 23, 1953, and was granted on December 14, 1953 (R. 38). The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

## QUESTION PRESENTED

Whether a Filipino who entered the United States prior to the enactment of the Philippine Independence Act of 1934, but who was twice convicted of crimes involving moral turpitude committed after enactment of that statute, may be deported under Section 19 of the Immigration Act of 1917 as an alien who has committed such crimes after entry into the United States.

## STATUTES INVOLVED

Section 19 (a) of the Immigration Act of February 5, 1917, 39 Stat. 889, as amended, formerly 8 U. S. C. 155 (a), provides in pertinent part:

> * * * except as hereinafter provided, any alien who is hereafter sentenced to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude, committed within five years after the entry of the alien to the United States, or who is hereafter sentenced more than once to such a term of imprisonment because of conviction in this country of any crime involving moral turpitude, committed at any time after entry * * * shall, upon the warrant of the Attorney General, be taken into custody and deported * * *.

The Act of March 24, 1934, known as the "Philippine Independence Act", 48 Stat. 456, c. 84, formerly 48 U. S. C. 1232 *et seq.*, provided in pertinent part:

SEC. 8. (a) Effective upon the acceptance of this Act by concurrent resolution of the Philippine Legislature or by a convention called for that purpose, as provided in section 17—

(1) For the purposes of the Immigration Act of 1917, the Immigration Act of 1924 (except section 13 (c)), this section, and all other laws of the United States relating to the immigration, exclusion, or expulsion of aliens, citizens of the Philippine Islands who are not citizens of the United States shall be considered as if they were aliens. For such purposes the Philippine Islands shall be considered as a separate country and shall have for each fiscal year a quota of fifty.

* * * * *

SEC. 14. Upon the final and complete withdrawal of American sovereignty over the Philippine Islands the immigration laws of the United States (including all the provisions thereof relating to persons ineligible to citizenship) shall apply to persons who were born in the Philippine Islands to the same extent as in the case of other foreign countries.

**STATEMENT**

Respondent, a native of the Philippine Islands, entered the United States in 1930 at the age of seventeen (R. 9, 14). In 1941, he was convicted in the Superior Court of the State of California of the crime of assault with a deadly weapon and

was sentenced to imprisonment for one year (R. 9, 15). In 1950, he was convicted of second degree burglary in the State of Washington and was sentenced under the indeterminate sentence law of that state for a term, the minimum of which was to be set by the Parole Board, and the maximum of which was fifteen years. He served two years for said offense (R. 10, 15).

In July, 1951, after a hearing, respondent was ordered deported under Section 19 of the Immigration Act of 1917 (*supra,* p. 2) as an alien who after entry had been sentenced more than once to imprisonment for terms of one year or more for crimes involving moral turpitude (R. 10, 14, 15). After he was taken into custody for deportation, he filed a petition for a writ of habeas corpus, subsequently amended (R. 8–13), in which he claimed to be a national of the United States and also attacked the validity of the deportation order on the grounds that (1) the crime of which he was convicted in California was not one involving moral turpitude, and (2) he was not within the intent of Section 19 of the Immigration Act of 1917 since he was a national of the United States at the time the California crime was committed. The district court dismissed the petition (R. 18).[1]

On appeal, the Court of Appeals for the Ninth Circuit reversed the order of the district court

[1] A previous petition for habeas corpus brought in the United States District Court for the Western District of Washington had also been dismissed (R. 11, 15).

(R. 36), Judge Bone dissenting (R. 29–35). The court rejected three of petitioner's contentions—(1) that the crime of assault with a deadly weapon was not a crim involving moral turpitude; (2) that petitioner remained a national of the United States after Philippine independence in 1946; (3) that Section 19 was inapplicable to his case because he was a national of the United States when the first offense was committed (R. 25–27). A majority of the court below held, however, that petitioner was not deportable under Section 19 of the Immigration Act of 1917 because, having entered in 1930 as a national of the United States, he had made no "entry" within the terms of that section providing for deportation of aliens convicted of two crimes involving moral turpitude "committed at any time after entry" (R. 27–29). This holding is in accord with the same court's previous ruling that a Filipino who came to the United States before the Independence Act of 1934 had not entered the United States and was therefore not deportable under Section 22 of the Internal Security Act of 1950, a ruling which was one of alternative grounds of the court's decision in *Mangaoang* v. *Boyd*, 205 F. 2d 553, petition for certiorari No. 345, this Term, denied November 9, 1953.

## SUMMARY OF ARGUMENT

A. Although the Philippine Independence Act of 1934 provides that citizens of the Philippine

Islands shall be considered as aliens for the purpose of deportation, the court below has held that a citizen of the Philippine Islands who came to the United States prior to 1934, and who was convicted of crimes involving moral turpitude committed after 1934, did not make an "entry" into the United States so as to permit his deportation under Section 19 (a) of the Immigration Act of 1917 as an alien who has been convicted of more than one such crime "committed at any time after entry". In thus holding that the respondent did not make an "entry" because he was not an alien when he came into the United States, the court below admittedly has narrowed the usual meaning of "entry". As this Court has remarked, "the words of statutes * * * should be interpreted where possible in their ordinary, everyday senses". *Crane* v. *Commissioner of Internal Revenue,* 331 U. S. 1, 6. Nothing in the language or purpose of Section 19 (a) of the 1917 Act in any way justifies a departure from the common meaning of "entry" as a coming into the United States. Rather, the history of Section 19 (a) discloses unmistakably the purpose of Congress to rid the country of aliens who are "criminal[s] at heart," irrespective of their status on coming to this country. See *Fong Haw Tan* v. *Phelan,* 333 U. S. 6, 9. The clause of Section 19 (a) here involved originated as an amendment to a provision authorizing deportation of alien criminals only within

five years after entry. Nothing could be plainer than that an expansion of the class of deportable alien criminals was intended, and that this intention would be frustrated by nice distinctions among such alien criminals based on their status at the time of entering the United States.

Moreover, the 1917 Act was preceded by another Act of Congress which also made specified conduct grounds for deportation at any time after entry into the United States. That act, the Act of March 26, 1910 (36 Stat. 263) made an alien who engaged in prostitution "after such alien shall have entered the United States" deportable without limit as to time. In two decisions by the Court of Appeals for the Ninth Circuit, it was held that persons who had entered Hawaii before the transfer of its sovereignty to the United States, and so had never come into United States territory as aliens, nevertheless came within the terms of the statute. *United States* v. *Yamamoto,* 240 Fed. 390; *United States* v. *Sui Joy,* 240 Fed. 392. In answering the objection that technically the alien had never entered the United States, the court in the *Yamamoto* case observed: "The consideration which induced the amendment was that the objectionable aliens were in the United States, not the manner in which they got there." This conclusion is equally applicable to Section 19 (a).

B. The restrictive meaning given to "entry" by the court below largely nullifies Section 8 (a) of

the Philippine Independence Act of 1934 (48 Stat. 462), which in terms made citizens of the Philippine Islands subject to laws of the United States relating, *inter alia,* to expulsion. If, in order to come within Section 19 (a), it is essential that alienage and entry coincide, the effect is to exempt from expulsion, no matter what crimes they may commit, those Filipinos who resided here at the time the 1934 Act was passed. Since Section 8 (a) also limited new Filipino immigration to 50 per year, and since there were then 45,000 Filipinos in the United States, the effect of the decision below is to give to most Filipinos residing in this country an extensive immunity from deportation. Nothing in the 1934 Act or its history suggests that Congress intended an exemption of such magnitude as to largely negate its command that the expulsion laws should apply to citizens of the Philippine Islands. On the other hand, the Immigration Service, in a contemporaneous administrative regulation promulgated pursuant to Section 8 (a), declared that then-resident Filipinos would thenceforth be deportable like aliens, with the single pertinent exception that they should not be deported on the basis of acts occurring or conditions existing before the effective date of the Act. 8 C. F. R. (1939) § 30.9. Moreover, it is significant that since enactment of the Philippine Independence Act, Congress had used the term enter or "entry" in referring to the coming of Filipinos prior to

May 1, 1934 (the effective date of the Philippine Independence Act). Section 326 of the Immigration and Nationality Act of 1952, 66 Stat. 163, 248 (8 U. S. C. A. 1437); and the Act of July 2, 1946, 60 Stat. 416, 417.

C. The authorities relied on below do not support the proposition that "entry" has "become a word of art." The cases relied on by the Court of Appeals, far from narrowly and technically defining "entry," held that it "should have its ordinary meaning" (*United States ex rel. Volpe* v. *Smith,* 289 U. S. 422, 425), with the result that "entry" was found to encompass original and all subsequent comings into the United States. *United States ex rel. Volpe* v. *Smith, supra, United States ex rel. Schlimmgen* v. *Jordan,* 164 F. 2d 633, 637 (C. A. 7). Two of the cases cited held that there is no "entry" when aliens return to the United States from foreign places where they had arrived due to circumstances beyond their control (*Delgadillo* v. *Carmichael,* 332 U. S. 388; *Di Pasquale* v. *Karnuth,* 158 F. 2d 878 (C. A. 2)), but such decisions are not relevant to the issue raised here. Since the persons involved in those cases were, in fact, aliens at the time of entry, the language of the courts in those cases has no bearing on the present question.

The lower court also sought support in the definition of "entry" in Section 101 (a) (13) of the Immigration and Nationality Act of 1952 (8 U. S. C. A. 1101 (a) (13)) as meaning "any coming of an

alien into the United States, from a foreign port or place or from an outlying possession." However, Congress made it clear that this definition of "entry" does not exclude the arrival in the United States of one who has since acquired alien status, for Section 326 of the same statute refers to the coming of Filipinos to the United States prior to the Philippine Independence Act as an "entry" (8 U. S. C. A. 1437).

## ARGUMENT

### THE COURT OF APPEALS ERRED IN HOLDING THAT "ENTRY," AS USED IN SECTION 19 (a) OF THE IMMIGRATION ACT OF 1917, MEANT ONLY THE COMING OF A PERSON, WHILE HE IS AN ALIEN, INTO THE UNITED STATES

The validity of the decision below turns entirely on the proper meaning of the word "entry" as used in Section 19 (a) of the Immigration Act of 1917, *supra*. The pertinent clause of that statute calls for the deportation of aliens who have more than once been convicted and sentenced to imprisonment for crimes involving moral turpitude "committed at any time after entry."[2] The Court of Appeals, one judge dissenting, held that as there used "entry" does not have "its plain and obvious meaning," but "has become a word of art," now meaning only the coming of a person into the United States at a time when he is an

[2] Respondent was convicted of assault with a deadly weapon and second-degree burglary, both of which the Court of Appeals held to involve the requisite moral turpitude (R. 26).

alien (R. 28). The court held, accordingly, that respondent, who came to the United States in 1930 as a citizen of the Philippines and a national of the United States—hence not as an alien—had not made an "entry" within the technical meaning of that word.[3] The practical result of the decision below is that respondent cannot be deported although he was an alien both when he committed the crimes constituting the ground for deportation and when the deportation proceedings were instituted. The sole issue now raised is whether there is any basis for that narrow and technical reading of "entry." We submit that there is not.

A. THE CONTEXT AND HISTORY OF THE TERM "ENTRY" AS USED IN SECTION 19 (a) SHOW THAT IT HAS THE ORDINARY MEANING OF A COMING INTO THE UNITED STATES

1. *Words of a statute should be given their ordinary meaning unless a different intent is clearly shown.*—The court below recognized that the meaning which it ascribed to the word "entry" is not its "plain and obvious" meaning (R. 28).[4] Respondent came into the United States at San

[3] The court below did not question that for purposes of Section 19 (a) respondent could be treated as an alien from the effective date of the Philippine Independence Act (48 Stat. 456, 462). Both convictions occurred after the effective date of that Act (May 1, 1934), and the court makes it plain that had he made an "entry" he could have been deported (R. 26–27).

[4] In *Webster's New International Dictionary* (2d ed.), "enter" is defined as: 1. To go or come in, to a place or condition * * *.

Francisco in 1930, and, in the usual sense of the word, he then made an "entry" into the United States. This Court has noted that "the words of statutes * * * should be interpreted where possible in their ordinary, everyday senses." *Crane* v. *Comm'r of Internal Revenue,* 331 U. S. 1, 6; see *Addison* v. *Holly Hill Co.,* 322 U. S. 607, 618. This canon of construction favoring the ordinary meanings of common words is not vitiated by that favoring strict construction "because deportation is a drastic measure * * *." *Fong Haw Tan* v. *Phelan,* 333 U. S. 6, 10,[5] quoted by the court below (R. 29). As was said by this Court in *United States* v. *Brown,* 333 U. S. 18, 25–26:

> The canon in favor of strict construction is not an inexorable command to override common sense and evident statutory purpose. It does not require magnified emphasis upon a single ambiguous word in order to give it a meaning contradictory to the fair import of the whole remaining language. As was said in *United States* v.

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[5] This Court in the *Fong Haw Tan* case construed the provision of Section 19 (a) involved here as applying only to one who after having served a term of imprisonment for a crime involving moral turpitude again is convicted and sentenced to imprisonment for such an offense. The provision was held not to apply to one who on the same occasion was convicted of two separate offenses in two counts of a single indictment. This construction, while "strict," carries out the intent of Congress as disclosed by the language and legislative history of the statute. That is not true of the "strict construction" adopted by the court below in this case.

> *Gaskin,* 320 U. S. 527, 530, the canon "does not require distortion or nullification of the evident meaning and purpose of the legislation." Nor does it demand that a statute be given the "narrowest meaning"; it is satisfied if the words are given their fair meaning in accord with the manifest intent of the lawmakers.

Thus, the court below was under no compulsion to read into the word "entry" a requirement that a person must be an alien at the time when he came into the United States. This circumstance is not a normal ingredient of an "entry". Nothing in the language of Section 19 (a) suggests that an alien who is now physically present in the United States cannot be regarded as having entered the United States unless he was an alien when he came here, or that Congress was concerned with his status prior to the time when, as an alien, he became subject to deportation. *Eichenlaub* v. *Shaughnessy,* 338 U. S. 521, 531–532. The clear purpose of Congress as disclosed by the history of Section 19 (a), Congressional usage in other statutes, and prior judicial definition of the word in this context compel a contrary conclusion.

2. *The clear purpose of Section 19 (a) is to require the deportation of a particular class of undesirable aliens who have come into the United States regardless of their status at the time they arrived.*—The legislative history of Section 19 (a)

does not specifically refer to the deportability of Filipinos under that section, since at the time of its enactment they were not subject to deportation. However, that history makes clear the Congressional purpose to remove from the United States *all* aliens whose repeated criminal conduct made their continued presence undesirable. That purpose would, of course, be frustrated by a narrow definition of "entry" under which aliens who had engaged repeatedly in criminal conduct would be permitted to remain in the United States merely because at the time of their entry into the United States they had not been aliens.

The manner in which the clause of Section 19 (a) under which respondent was ordered deported entered the 1917 Act was described by the Senate Committee on Immigration in its report accompanying the bill as passed by the House as follows (S. Rep. 352, 64th Cong., 1st Sess., p. 15):

> When the act was passed as H. R. 6060 it contained a new provision * * * for the deportation of aliens who commit serious crimes within five years after entry * * *. As the act now stands the House has added, at the suggestion of its committee * * *, *a provision intended to reach the alien who after entry shows himself to be a criminal of the confirmed type, such aliens to be deported without limitation on the length of time after entry when they commit*

*a second serious offense.* * * * [Emphasis supplied.]

The debate in the House when the provision referred to in the Senate Report was introduced and adopted emphasizes that Congress was concerned with the problem of alien criminals and did not make nice distinctions between classes of aliens based upon their status at the time they entered the United States. Representative Sabath introduced it as an amendment to a provision calling for the deportation of aliens who within five years after entry committed one crime involving moral turpitude. In explaining the amendment, Representative Sabath declared (53 Cong. Rec. 5167):

> My amendment provides that after a second offense committed by such an alien, or where he has been for the second time convicted, the five-year limitation should not apply. In other words, even though he may have been residing in the United States for five years or more, if he is for the second time convicted of any offense or crime involving moral turpitude, he should be deported. The provisions in this act covering the majority of cases place the limitation at five years.
>
> A little later on, after the adoption of this amendment, I am going to move to reduce the term from five years to three years, but I am offering this amendment to demonstrate *that I have no desire to protect a real criminal, a man who is a*

> *criminal at heart, a man who is guilty of a second offense involving moral turpitude and for the second time is convicted. A man of that kind is a criminal and is not entitled to consideration on the part of any of the citizens of the United States.* [Emphasis supplied.]

Representative Burnett, who was in charge of the bill on the floor, described the testimony which had induced the committee to submit the amendment (53 Cong. Rec. 5168):

> The police commissioner of New York was before the committee, and he showed an alarming condition in the prisons in regard to aliens who commit crimes after they come here, and he insisted that there should be no time limit as to the deportation of any of them this side of final citizenship.

This suggestion was rejected, but the committee unanimously accepted the Sabath proposal as a suitable compromise. The committee's view, according to Mr. Burnett, was that "on the commission of the second offense, showing that the man was really a criminal at heart, we believed that he ought to be deported." (*ibid.*). The only opposition to the amendment came from Representative Bennet, who thought that one conviction of a serious crime ought to be sufficient to warrant deportation, and was unable to understand "the tenderness of this House toward aliens who commit crimes." (*ibid.*).

The legislative history shows that it was the purpose of Congress to expel from this country aliens who showed themselves to be "criminal[s] at heart" by committing two offenses of the specified type *"at any time* after entry." See *Fong Haw Tan* v. *Phelan, supra,* at p. 9. Such persons, as the House Committee learned from the New York Police Commissioner, were a menace to law and order, and the five year limitation was removed as to such alien criminals in order to meet this menace. It is unreasonable to suppose that Congress, while on the one hand thus expanding the class of deportable alien criminals, sought, at the same time, by the use of a narrow concept of "entry", to restrict that class by shielding from deportation those alien criminals who are actually in the United States but were not aliens at the time of entry. Such persons are no less a threat to the peace and order of the community, and their continued residence is no less at the sufferance of the United States. As the dissenting judge points out: "In such case the 'entry' is not, in any real sense, an element of the deportable conduct, any more than is the birth of an accused an element of the crime with which he is charged" (R. 34–35). Compare *Del Guercio* v. *Gabot,* 161 F. 2d 559 (C. A. 9).

In addition, since as we have indicated (*supra,* pp. 11–12), common words where possible are to be given their usual meanings, it would appear to be essential to the construction below that the histori-

cal use of the word "entry" should at least suggest that Congress uses that term in a narrow and highly special sense. There is no evidence of such a technical usage.

Thus, the 1917 Act was not the first act of Congress to make specified conduct grounds for deportation at any time after entry. Representative Sabath, in the debates on Section 19 (a) discussed above, mentioned as a precedent for his amendment a previously enacted provision which required the deportation of aliens connected with prostitution without limit as to time. (53 Cong. Rec. 5168). That provision was contained in the Act of March 26, 1910 (36 Stat. 263), amending Section 3 of the Act of F ruary 20, 1907 (34 Stat. 898) which had placed a three year limitation on the deportation of aliens engaged in prostitution. The 1910 statute read in pertinent part as follows:

> Any alien who shall be found an inmate of or connected with the management of a house of prostitution or practicing prostitution *after such alien shall have entered the United States,* * * * shall be deemed to be unlawfully within the United States and shall be deported in the manner provided by sections twenty and twenty-one of this Act. [Emphasis supplied.][6]

Although the opinion below ignores them, there are decisions from the Ninth Circuit, decided, by

[6] This provision was incorporated without substantial alteration into Section 19 (a) of the Immigration Act of 1917.

coincidence, on the same day that the 1917 Act was passed, which fully disposed of the contention that the phrase "after such alien shall have entered the United States" should be construed to mean that the alien must have been an alien at the time he came into this country as well as when he committed the acts constituting grounds for deportation. *United States* v. *Yamamoto,* 240 Fed. 390 (C. A. 9); *United States* v. *Sui Joy,* 240 Fed. 392 (C. A. 9). Both cases involved aliens who were residents of Hawaii before the transfer of its sovereignty to the United States, so that, as here, there had been no "entry," as the court below defines that term, into the United States by an alien. The applicability of the 1910 statute to those aliens was the sole question considered by the court in the *Yamamoto* case, *supra,* and the court disposed of the question as follows (240 Fed. at 391):

> The definition of the charge under which the appellee is held for deportation is limited by the words "after such alien shall have entered the United States." It is true that she has never technically entered the United States. While the territory of Hawaii may in a sense be said to have entered the United States by its annexation on August 12, 1898, it does not follow that its inhabitants thereby became immigrants to the United States. In ascertaining the intention of Congress in making the amendment of 1910, an important fact is that the

> amendment was made by striking certain words from the former act, whereby the time limitation in the former act was repealed. We think that Congress intended by the amendment to say that any alien found in the United States practicing prostitution shall be sent out of the country, and that such exclusion shall apply to all alien women, whether they came into the United States at a port of entry, or by the annexation of the land in which they lived * * * and that the words "after such alien shall have entered the United States" should be construed as if they read "while such alien is in the United States." It should be assumed that Congress intended to make no discrimination between these classes of aliens. *The consideration which induced the amendment was that the objectionable aliens were in the United States, not the manner in which they got here.* [Emphasis supplied.]

In the *Sui Joy* case, *supra,* the court indorsed this construction,[7] and added that its validity was unaffected by an administrative regulation requiring that the warrant of arrest for deportation be accompanied by a certificate of landing. Observance of this rule, the court noted (240 Fed. at 394)—

[7] It should be noted that the statutory question in these cases was, if anything, more difficult than that now raised, for literally the aliens involved had never "entered [come into] the United States," while, admittedly, respondent did come into this country.

> "may be essential in all those deportation cases in which the proceedings must be begun within a fixed period after the alien has entered the United States, * * *. But it does not follow from the promulgation of that rule that the officers of the department have construed the provisions of section 3 as amended in 1910, as applicable only to aliens who have entered at a port of the United States, and that in deporting such aliens the fact of entry must be shown.

See also *Tama Miyake* v. *United States,* 257 Fed. 732, 733 (C. A. 9). These decisions, the only cases to have construed "entry" in a statute of the type involved here, if not dispositive of the present case, at least establish that in 1917 "entry" had not become a "word of art" with the technical and limited meaning ascribed to it by the court below. There is thus no reason at this late date to give it a restricted meaning which does not comport with the obvious purpose of the statute.

B. "ENTRY" AS A TERM OF ART MEANING ONLY "ENTRY AS AN ALIEN" UNDULY LIMITS SECTION 8 (A) OF THE PHILIPPINE INDEPENDENCE ACT OF 1934, AND IS CONTRARY TO CONSISTENT CONGRESSIONAL USAGE IN OTHER STATUTES REFERRING TO FILIPINOS WHO CAME TO THE UNITED STATES PRIOR TO THAT ACT

The restrictive effect of narrowly defining "entry", is not limited to Section 19 (a) of the Immigration Act of 1917. If "entry" does not embrace the coming of a Filipino to the United States prior to May 1, 1934, the operation of Section 8 (a) (1) of the Philippine Independence

Act (48 Stat. 462) is severely curtailed. That section provided:

> (1) For the purposes of the Immigration Act of 1917, the Immigration Act of 1924 (except Section 13 (c)), this section, and all other laws of the United States relating to the immigration, exclusion, or *expulsion* of aliens, *citizens of the Philippine Islands who are not citizens of the United States shall be considered as if they were aliens.* For such purposes the Philippine Islands shall be considered as a separate country and shall have each fiscal year a quota of fifty. * * * [Emphasis supplied.]

The plain language of this section states that Philippine citizens shall be treated as aliens for purposes of the immigration laws, including expulsion. Nothing in the statute, and nothing in the extensive history of its enactment, indicates that it was not meant to apply to Philippine citizens who then resided in the United States, but who previously had entered this country.[8] However, unless such resident Filipinos can be said to have made an "entry" into the United States, they would be effectively eliminated from the operation of Section 8 (a), since virtually all of the grounds for expulsion contained in Section 19 (a) of the Immigration Act depend upon con-

[8] Cf. *Cabebe* v. *Acheson*, 183 F. 2d 795 (C. A. 9); *Barber* v. *Varleta*, 199 F. 2d 419 (C. A. 9).

duct "prior to" or "after entry."[9] Thus, it follows from the decision below that only Filipinos who entered the United States (or re-entered) after the effective date of the Philippine Independence Act would come within the purview of Section 8 (a).

It is not likely that Congress would have assimilated "citizens of the Philippine Islands" to the status of aliens while intending to exclude from important incidents of alienage the large number of Philippine citizens who then resided in the United States. This is especially true in view of the fact that Congress, knowing that as of 1930 there were over 45,000 Filipinos in the United States (S. Rep. 494, 73d Cong., 2d Sess., pp. 12–13), limited future Filipino immigration to 50 per year. The construction of the court below results in Section 8 (a) being applicable during the expected ten year life of the statute to only 500[10] of the more than 45,000 persons coming within its literal terms. Nothing in the 1934 Act or its history even suggests an exception of such magnitude.

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[9] The only expulsion provision that does not specifically refer to conduct "after entry" or "prior to entry" is that relating to aliens whose entry was itself unlawful (8 U. S. C. 155 (a)).

[10] Plus, of course, resident Filipinos who departed and later returned.

On the other hand, there is a contemporaneous administrative construction that unmistakably implies that no such exception was contemplated. The administrative regulation promulgated by the Immigration Service on June 8, 1934, pursuant to Section 8 (a) of the act provided in pertinent part (8 C. F. R. (1939) § 30.9):

> All citizens of the Philippine Islands shall be subject to deportation, and may be deported in the same manner as aliens, with the following exceptions:
>
> (a) A citizen of the Philippine Islands who has resided in the United States continuously since April 30, 1934, shall not be subject to deportation for any act of his that occurred, or mental or physical disease, disability, or defect that existed prior to May 1, 1934.

This clearly implies that Filipinos whose residence in the United States commenced on or before April 30, 1934, could be deported on the basis of criminal acts occurring subsequent to May 1, 1934, and the Board of Immigration Appeals so held repeatedly. 3 I. & N. Dec. 155, 184, 396. The above exception to the broad import of the regulation that "all citizens of the Philippine Islands shall be subject to deportation, etc." manifestly does not reach the present type of case. A contemporaneous administrative construction that in the twelve year existence of the

Act[11] was never repudiated by Congress is entitled to great weight. See, e. g., *Fleming* v. *Mohawk Co.,* 331 U. S. 111, 116, and cases cited. This construction, however, must be brushed aside if the definition of "entry" by the Court below is sustained.

Moreover, it is significant that, since the enactment of the Philippine Independence Act, Congress has used the terms "enter" or "entry" as applying to the coming of a Filipino to the United States prior to May 1, 1934. Thus, in 1946 Congress provided that for purposes of naturalization, certificates of arrival or declarations of intentions should not be required of Filipinos "who *entered* the United States prior to May 1, 1934, and have since continuously resided in the United States." Act of July 2, 1946, 60 Stat. 416, 417. Similarly Section 326 of the Immigration and Nationality Act of 1952 reads as follows (8 U. S. C. A. 1437):

> Any person who (1) was a citizen of the Commonwealth of the Philippines on July 2, 1946, (2) *entered* the United States prior

[11] While Section 8 (a) of the Philippine Independence Act became ineffective with the proclamation of independence in 1946 (Proc. No. 2695, July 4, 1946, 60 Stat. 1352), Section 14 of the same Act (48 Stat. 464, 48 U. S. C. 1244) thereupon became effective to require that the immigration laws be applied to persons born in the Philippine Islands as in the case of other aliens.

> to *May 1, 1934,* and (3) has, since *such entry,* resided continuously in the United States shall be regarded as having been lawfully admitted to the United States for permanent residence for the purpose of petitioning for naturalization under this title. [Emphasis supplied.]

Thus "enter" was used in its ordinary sense not only in 1917, before the present problem could have been anticipated by Congress, but subsequently, after the Philippines had become independent. Only the ordinary meaning of "entry" comports with the clear purposes of the 1917 Act and Section 8 (a) of the Philippine Independence Act, as well as with subsequent Congressional action with respect to Filipinos who came to this country prior to 1934.

C. NEITHER THE DECISIONS OF THIS COURT NOR THE DEFINITION OF "ENTRY" IN THE 1952 ACT SUPPORT THE DECISION BELOW

The construction of the term "entry" by the court below, which, as we have shown, is contrary to the "ordinary, everyday" meaning of the word, the legislative purpose, prior judicial construction, and later Congressional usage, rests upon two supposed bases: (1) a group of cases in which courts, at least in the view of the court below, have defined "entry" technically as the coming of an alien into the United States; and second, the definition of "entry" set out in § 101 (a) (13) of the Immigration and Nationality Act of 1952, 8 U. S. C. A. 1101 (a) (13).

1. *Read in context, the cases relied on below do not support a narrow, technical definition of "entry".*—The opinion below lists four cases in which a concept of entry as the coming of an alien from a foreign country into the United States was applied. The language first appeared in *United States ex rel. Volpe* v. *Smith,* 289 U. S. 422, 425, and was repeated in *Delgadillo* v. *Carmichael,* 332 U. S. 388, 390; *Di Pasquale* v. *Karnuth,* 158 F. 2d 878 (C. A. 2); *United States ex rel. Schlimmgen* v. *Jordan,* 164 F. 2d 633, 637 (C. A. 7). However, the opinion in *Volpe* v. *Smith, supra,* makes clear on several counts that this Court had no intention whatever of defining "entry" so as in the future to preclude from its coverage the coming into the United States of a nonalien.[12]

In part, this is made clear by the context in which the language appears. At the place cited by the court below, this Court declared (289 U. S. at 425):

> We accept the view that the word "entry" * * * *includes any* coming of an alien from a foreign country into the United

[12] The majority opinion in this case stated in this connection (R. 28):

> "While it is true that the ultimate holdings * * * were that the coming of an alien into the United States for the second time was an 'entry', we do not rely upon the holding of these cases but merely cite them as showing the narrow meaning which has been ascribed to the word."

> States *whether such coming be the first or any subsequent one.* [Emphasis supplied.]

The italicized words above make clear that the Court's purpose was to *broaden* the term "entry" so as to include other than original entries. That the Court spoke of the "coming of an alien" must be regarded as purely fortuitous; Volpe, of course, was an alien at the time of his original and later entries, and the circumstances presented in the instant case plainly were not contemplated by the Court.

It is clear, moreover, that this Court there chose to employ a broad, nontechnical definition of "entry" rather than the restricted one then being urged upon it. The Court explained in language equally pertinent to the present issue its principal reason for selecting the broader meaning. The Court remarked (*ibid.*):

> An examination of the Immigration Act of 1917, we think, reveals nothing sufficient to indicate that Congress did not intend the word "entry" in § 19 *should have its ordinary meaning.* [Emphasis supplied.]

We think it equally apparent that the other decisions cited below, dealing with persons who had at all times been aliens, in no way hold that under Section 19 (a) of the Immigration Act of 1917 it was essential that alienage and entry coincide. The question simply was not before the courts. The *DiPasquale* and *Delgadillo* cases, *supra,* stand on no different footing merely because in those

cases it was held that there had been no entry within the contemplation of the statute. These cases merely qualify the broad sweep of *United States ex rel. Claussen* v. *Day*, 279 U. S. 398, and of *Volpe* v. *Smith, supra,* by limiting "entry" to a return to the United States following a knowing or voluntary departure from the United States to a foreign place.[13] Thus, the cases relied on below are wholly inapposite to the present issue, except to the extent that they hold that entry "should have its ordinary meaning." See *Volpe* v. *Smith, supra.*

2. *The definition of "entry" in the Immigration and Nationality Act of 1952 would not preclude its application to the coming of Filipinos to the United States prior to the 1934 Act.*—The majority opinion below seeks support for its position in the definition of "entry" adopted in Section 101 (a) (13) of the Immigration and Nationality Act of 1952 (8 U. S. C. A. 1101 (a) (13)). That subsection reads as follows:

> The term "entry" means any coming of an alien into the United States, from a foreign port or place or from an outlying

[13] In *DiPasquale*, it was held that there had been no new entry into the United States by an alien who, while riding a train between two points within the United States, passed through Canada en route, the route of the train being unknown to him. In *Delgadillo*, the alien's return to the United States from Cuba was held not to be a new entry since he had been put ashore at Havana after a ship on which he was serving as a seaman had been torpedoed.

> possession, whether voluntarily or otherwise, except that an alien having a lawful permanent residence in the United States shall not be regarded as making an entry into the United States for the purposes of the immigration laws if the alien proves to the satisfaction of the Attorney General that his departure to a foreign port or place or to an outlying possession was not intended or reasonably to be expected by him or his presence in a foreign port or place or in an outlying possession was not voluntary * * *.

This definition plainly reflects nothing but the propositions established earlier by the cases referred to above, and by other cases,[14] that reentries as well as original entries are encompassed by the term "entry"—with the limitation that the preceding departure to a foreign place must have been intentional and voluntary. Again, the phrase "coming of an alien" reflects nothing more than the inevitable preoccupation of the immigration laws with persons who were aliens when they came into the United States.

Furthermore, as we have seen, in Section 326 of the 1952 Act Congress used "entry" in referring to the coming of Filipinos to the United

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[14] *Lapina* v. *Williams*, 232 U. S. 78; *United States ex rel. Claussen* v. *Day*, 279 U. S. 398; *Schoeps* v. *Carmichael*, 177 F. 2d 391 (C. A. 9); *United States ex rel. Doukas* v. *Wiley*, 160 F. 2d 92 (C. A. 7); *Del Castillo* v. *Carr*, 100 F. 2d 338 (C. A. 9); *Jackson* v. *Zurbrick*, 59 F. 2d 937 (C. A. 6).

States prior to May 1, 1934 (*supra*, pp. 25–26). It is unreasonable to suppose that Congress defined the term "entry" in Section 101, and in Section 326 of the same act used it in a different sense. The latter section would be rendered meaningless were the lower court's construction to stand, a result wholly inconsistent with the long-established rule of construction that "repugnency should, if practicable, be avoided * * *." *Lamp Chimney Co.* v. *Ansonia Brass & Copper Co.*, 91 U. S. 656, 663; see *United States* v. *Moore*, 95 U. S. 760, 763. The inconsistency is readily resolved if "entry" is taken to mean any coming (original or subsequent) by one who either is or later becomes an alien, subject to the limitation that the departure preceding a reentry was intended and voluntary.

**CONCLUSION**

We conclude that: (1) there is no judicial authority sustaining the lower court's restrictive definition of entry; (2) legislative usage does not conform to such a definition of entry; and (3) so defining "entry" limits and distorts the scope and meaning of the relevant provisions of the Immigration Act of 1917 and the Philippine Independence Act in a way wholly unwarranted by their plain language, purpose, and (in the case of the Philippine Independence Act) contemporaneous administrative interpretation. We, therefore,

respectfully submit that the decision below should be reversed.

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